

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

Appeal No. 185 of 1997
In
Show Cause Notice No. 1192 of 1996
In
Chamber Summons No. 1021 of 1996
In
Suit No. 1848 of 1992

Smt. Hastikala P. Vira & Anr.	.. Appellants
V/s.	
M.D. Mistry & Ors.	.. Respondents

Mr. M.P.S. Rao with Ms. Yogini Gada i/b. M/s. L.C.
Tolat & Co. for the Appellants

Mr. Phiroz Palkhiwala with Ms. Sruti Baid i/b.
Mr. Raj Baid for the Respondent No. 1

Ms. U.M. Narielwala with Ms. U.S. Shah for the
Respondent No. 3

Ms. Vijaya Lad i/b. M/s. Harakchand & Co. for the
Respondent No. 5

**CORAM : DR. S. RADHAKRISHNAN &
S.C. DHARMADHIKARI, JJ.
DATED : 29.09.2005.**

P.C.:-

1. By this Appeal, the Appellants are challenging the order dated 10.1.1997 passed by the learned Single Judge in Show Cause Notice No. 1192 of 1996, whereby the learned Single Judge has found both the Appellants guilty of committing contempt and having sentenced them to undergo simple imprisonment for a period of one month and to pay a fine of Rs. 2,000/- each. Mr. Rao stated that the aforesaid fine amount of Rs. 2,000/- has already been deposited in this Court at the time when the above Appeal was admitted.

2. The brief facts are that the Respondent No. 1,

being the original Plaintiff had filed a Suit against the Respondent Nos. 2 to 4 being the Original Defendants, with regard to a property dispute amongst themselves. In the said Suit, it appears that the Court Receiver, High Court, Bombay was appointed and the Court Receiver, Bombay by inspecting various tenements, found that in flat no., 6 on second floor of building "Giri Kunj", the Appellants were found in the said premises, which belonged to the original tenant, one Mr. S.R. Rajarao and after his demise, Mrs. Chowdeshwari, his widow was staying in the said premises. In view thereof, the Court Receiver had filed a Report before the High Court to take further steps in the matter. While the said Court Receiver's Report was made, the present Appellant had filed an Affidavit dated 23.8.1996 and the Appellant No. 2 being the constituted attorney of the Appellant No. 1 and being the brother in law of the Appellant No. 1 had filed Affidavit dated 5.9.1996 contesting the aforesaid Court Receiver's report. During the said proceedings, it appears that the Appellants had also filed two leave and licence agreements dated 4.11.1985 and 17.10.1986 contending that the original tenant Mr. S.R. Rajarao had left for his native place- State of Karnataka and thereafter his widow had gone to State of Karnataka. The present Appellants had contended that they have been in possession of the Suit premises, much prior to the appointment of the Court Receiver on 10.11.1995. It appears that the Appellant No. 1 had

also filed a declaratory Suit in the Court of Small Causes in November, 1996 claiming a declaration that the Appellant No. 1 was a protected tenant by virtue of two leave and licence agreements and exclusive possession.

3. The learned Single Judge by his order dated 12.9.1996, this Court had disbelieved the affidavits of the Appellants and the Court Receiver was directed to take possession of the Suit flat. It appears that the two leave and licence agreements dated 4.11.1985 and 17.10.1986 were also disbelieved. The learned Judge has also directed the Court Receiver to take possession of the Suit premises. A Chamber summons was taken out by Chowdeshwari, widow of the original tenant, contending therein that after the death of her husband Rajarao, she has been residing in the said flat and that no leave and licence agreement was entered in favour of any party.

4. Having regard to the above facts and circumstances, it appears that show cause notice was issued to the Appellant to show cause why Contempt action should not be initiated against them. The said show cause notice is dated 8.11.1996.

5. There is no dispute that after the said show cause notice was served on the Appellants, the Appellant No.

1 had already withdrawn the Suit filed before the Court of Small Causes, being the aforesaid RA Declaratory Suit. When the above matter came up for hearing on 10.1.1997, before the learned Single Judge, both the Appellants seems to have tendered unconditional apology in their affidavits-in-reply in the above, however, it appears that the same were not taken on record.

6. We have perused both the affidavits in reply dated 10.1.1997 of the Appellant No. 1 as well as Appellant No. 2, wherein both of them have tendered un-conditional apology and had sought discharge of the aforesaid show cause notice.

7. Shri Rao, the learned counsel appearing for the Appellants, in fact did not seek to justify the conduct of the Appellants and contended that the Appellant No. 1, is a widow and the Appellant No. 2, who is the younger brother in law being the constituted attorney of Appellant No. 1 have been staying in the Suit flat no. 6. After the death of Mr. Rajarao, Mrs. Rajarao used to be away from the flat very often. Mr. Rao, also stated that mostly at night they used to reside for the purpose of sleeping, however, Mr. Rao, the learned counsel for the Appellants pointed out that since the show cause notice was issued, immediately the Appellant No. 1 had withdrawn the Suit filed before the Court of Small Causes and on the very first date

i.e. on 10.1.1997, both of them had tendered an un-conditional apology. Even the learned Single Judge has recorded in the order that Mr. Rao, the learned counsel had tendered an un-conditional apology on behalf of the Appellants.

8. Shri Rao, the learned counsel for the Appellants therefore, prayed that having regard to the facts and circumstances of the case, the punishment was excessive, specially having regard to the facts and circumstances of the case. Shri Rao, thereafter referred to a judgment of the Supreme Court in **Suresh Chandra Poddar v. Dhani Ram and others (2002) 1 Supreme Court Cases 766**, wherein paragraph 9 reads as under:-

9. Section 12 of the Contempt of Courts Act, 1971 has indicated a caution that while dealing with the powers of contempt, the court should be generous in discharging the contemner if he tenders an apology to the satisfaction of the court. In the present case the apology tendered was found to be not genuine by the Tribunal. We are dismayed, if not distressed, that despite delineating on all the steps adopted by the appellant for challenging the order of the Tribunal before the High Court and despite the fact that the appellant had implemented the order even though there was no time schedule to do so, the Tribunal has chosen to depict the apology tendered by the appellant as one without contrition.

9. Thereafter, Mr. Rao, also referred to another Constitutional Bench judgment of the Supreme Court in **Shri Baradakanta Mishra v. The Registrar of Orissa High Court and another (1974) 1 SCC 374**, wherein

paragraph 55 reads as under:-

55. As regards the sentence, it is enough to say that the Full Bench has considered the question at great length. There were six contempt proceedings against the appellant and the Court had treated him generously. In two proceedings he was let off with a fine. Even in the present case the Full Bench was of the opinion that the maximum sentence under the law was deserved by the appellant but imposed on appellant, through out, took a defiant attitude and did not even think it necessary to offer an apology. Ordinarily we would be most reluctant to interfere with the sentence imposed by the High Court, but for the fact that we notice that he has almost come to the end of his judicial career and during the last few years has been gripped by a sort of mania against the High Court which clouded his reason. We think the object of punishment will be served by directing him to pay a fine of Rs. 1,000 or in default to suffer simple imprisonment for 3 months in substitution of the sentence inflicted by the High Court.

He also referred to paragraph nos. 92, 93 and 95, which read as under:-

92. The policy directive can be gleaned from the ruling in **Special Reference No. 1 of 1964**, where Gajendragadkar, C.J., speaking for the Court observed:

"We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely, and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct."

If judges decay the contempt power will not save them and so the other side of the coin is that Judges, like Ceaser's wife, must be above suspicion.

93. To wind up, the key word is "justice", not "judge"; the key-note thought is unobstructed public justice, not the self-defence of a judge; the corner-stone of the contempt law is the accommodation of two constitutional values - the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and mala fide interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel.

95. The facts of the present case disclose that an incorrigible contemnor, who had made it almost his latter-day professional occupation to cross the High Court's path, has come to this Court in appeal. he has been reckless, persistent and guilty of undermining the High Court's authority in his intemperate averments in both petitions. But having regard to the fact that he is a senior judicial officer who has at some stage in his career displayed zeal and industry and is now in the sombre evening of an official career, a punishment short of imprisonment would have met the ends of justice and inspired in the public mind confidence in the justice administration by showing that even delinquent judges will be punished if they play with or pervert the due course of justice, as the contemnor here has done. A heavy hand is wasted severity where a lighter sentence may serve as well. A fine of Rs. 1,000 with three months' imprisonment in default of payment will meet the ends of justice and we impose this sentence in substitution of the infliction of imprisonment by the High Court. With this modification Civil Appeal No. 41 of 1973 is dismissed. On the appeal by the State the course adopted in the leading judgment of Palekar, J., has our concurrence.

10. Mr. Palkhiwala, the learned counsel appearing on behalf of the Respondent No. 1 contended that the facts disclosed herein clearly indicate that the Appellants have committed contempt of this Court. He pointed out that both the affidavits dated 10.1.1997 are not on record, however he does not dispute that the learned counsel on behalf of the Appellants had

tendered un-conditional apology before the learned Single Judge on 10.1.1997.

11. After considering all the facts and circumstances of the case, we do not find any error or illegality in the order of the learned Single Judge finding both the Appellants guilty of committing contempt.

12. However, having regard to the facts and circumstances of the case, the Appellant No. 1, being a widow and the Appellant No. 2, being her brother in law, due to severe space constraints, seems to have occupied the said flat and at the earliest opportunity, the Appellant No. 1 has withdrawn the Suit before the Court of Small Causes, as well as both have tendered an un-conditional apology right at the outset and also having regard to the aforesaid judgments of the Supreme Court, we feel that the ends of justice would be met, if we reduce the punishment to the extent of payment of fine of Rs. 2,000/- each. Accordingly the punishment is reduced to payment of fine of Rs. 2,000/- only which has been already paid.

13. Appeal stands disposed of accordingly.

(DR. S. RADHAKRISHNAN, J.)

(S.C. DHARMADHIKARI, J.)